

# SENATE . . . . . No. 431

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Karen E. Spilka**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the repair, removal and replacement of dams.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	Second Middlesex and Norfolk
Christine E. Canavan	10th Plymouth
Bruce E. Tarr	First Essex and Middlesex
Richard J. Ross	9th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. S00546 OF 2007-2008.]

## **The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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### **AN ACT RELATIVE TO THE REPAIR, REMOVAL AND REPLACEMENT OF DAMS.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1       SECTION 1. Whereas, there are more than three thousand dams in the Commonwealth,  
2       most of which are privately owned or have been abandoned, and many of which no longer serve  
3       their original purpose or any other purpose;

4       Whereas, many dams do not comply with the Commonwealth's health and safety standards and  
5       therefore pose an immediate threat to public health, safety, welfare, and the environment;

6       Whereas, the removal of dams serving no purpose would eliminate threats posed by those dams  
7       and would protect the environment, restore wildlife habitat, enhance fish passage, and eliminate  
8       regulatory requirements to register, inspect, and repair useless dams; and

9       Whereas, the deferred operation of this act would tend to defeat its purpose, which is to ensure  
10      that all dams in the Commonwealth are promptly inspected and, where appropriate, repaired or  
11      removed, therefore it is hereby declared to be an emergency law, necessary for the immediate

protection of public health, safety, welfare, and the environment.

SECTION 2. (a) Section 44 of chapter 253 of the General Laws, as appearing in 2006

official edition, is hereby amended by adding after line 2 the following new definition:-

“Abandoned”, a dam that has no identifiable owner or a dam whose owner fails to respond to the owner’s obligations under sections 44 to 48, inclusive.

(b) Section 44 of chapter 253 of the General Laws, as appearing in 2006 official edition, is

hereby amended by adding after line 33 the following new definition: - “High hazard potential

dam”, a dam located where failure will likely cause loss of life and serious damage to home(s), industrial or commercial facilities, important public utilities, main highway(s) or railroad(s).

(c) Section 44 of chapter 253 of the General Laws, as appearing in 2006 official edition, is

hereby amended by adding after line 39 the following new definition: - “Significant hazard

potential dam”, a dam located where failure may cause loss of life and damage home(s),

industrial or commercial facilities, secondary highway(s) or railroad(s) or cause interruption of use or service of relatively important facilities.

(d) Section 44 of chapter 253 of the General Laws, as appearing in 2006 official edition, is

further amended by inserting in line 9 after the word “any” the following words:- “man-made”

(e) Section 44 of chapter 253 of the General Laws, as appearing in 2006 official edition, is

further amended by deleting in lines 10-15 the following words:- “, and which (1) is 25 feet or

more in height from the natural bed of the stream or watercourse measured at the downstream toe

of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a

stream channel or watercourse, to the maximum water storage elevation or (2) has an

impounding capacity at maximum water storage elevation of 50 acre feet or more.”

(f) Section 44 of chapter 253 of the General Laws, as appearing in 2006 official edition, is further amended by inserting in line 17 the after the words “property or safety” the following words:- “or which could cause environmental harm”.

(g) Section 44 of chapter 253 of the General Laws, as appearing in 2006 official edition, is further amended in line 32 by striking the words “environmental management” and inserting in place thereof the following words:- “conservation and recreation”

(h) Section 44 of chapter 253 of the General Laws, as appearing in 2006 official edition, is further amended by adding after the definition of “Owner” the following definition:- “Remove,” or “Removal,” the controlled dismantlement or breaching of a dam to the extent that water is not impounded or diverted by the dam and fish passage is no longer impeded and which is dismantled in compliance with applicable laws and regulations of the Commonwealth.

SECTION 3. Dam Removal. (a) Section 46 of said chapter 253 of the General Laws, as appearing in 2006 official edition, is hereby amended in line 14 by inserting after the words “to be unsafe” the following words:- “, threaten the environment, be abandoned, not adequately maintained, or no longer serve its original purpose or any useful purpose as determined by the commissioner of the department”.

(b) Section 46 of said chapter 253, as appearing in the 2006 official edition, is further amended in line 19 by striking the words, “safety and property” and inserting in place thereof the following words: “safety, property or the environment”.

(c) Section 46 of said chapter 253, as appearing in the 2006 official edition, is further amended in line 22 by inserting after the words “bring the dam into a safe condition” the following words:- “or remove the dam”.

(d) Section 46A of said chapter 253, as appearing in the 2006 official edition, is hereby amended in line 1 by inserting after the word “removed” the following word:- “repaired,”

(e) Section 46A of said chapter 253, as appearing in the 2006 official edition, is further amended by inserting in line 5 after the words “the owner approving” the following words:- “or removing”

(f) Section 46A of said chapter 253, as appearing in the 2006 official edition, is further amended by deleting in line 7 the words “life and property,” and inserting in place thereof the following words, “safety, property or the environment.”

(g) Section 47 of said chapter 253, as appearing in the 2006 official edition, is hereby amended by inserting in line 6 after the words “operational condition,” the following words:- “or remove the dam”

(h) Section 47 of said chapter 253, as appearing in the 2006 official edition, is further amended by inserting in line 18 after the words “safety or property” the following words:- “or the environment.”

SECTION 4. Section 47 of said chapter 253 is hereby amended by striking in lines 22-23 the words “be fined an amount not to exceed \$500 for each offense” and inserting in place thereof the following words:- “shall be punished by a fine of not more than twenty-five thousand dollars

if the offense is at a high hazard potential dam or a significant hazard potential dam, as determined by the department, or shall be punished by a fine of not more than five thousand dollars if the offense is at any other dam.”

SECTION 5. (a) The commissioner of the department of conservation and recreation, in conjunction with the commissioner of fish and game, the division of fisheries and wildlife and the riverways program shall on or before December 1, 2010, complete a detailed report of all dams deemed jurisdictional under sections 44 through 48, inclusive, of chapter 253 of the General Laws, on public and private property in the Commonwealth. The commissioner of the department of conservation and recreation shall submit the report to the joint committee on environment, natural resources and agriculture and to the senate and house committees on ways and means. This report shall include the following detailed information:

(1) A comprehensive list of the person, agency, municipality, or entity that owns and operates every dam, or listed as abandoned if an owner or operator cannot be ascertained, and the location of every dam, where such ownership or operation has been registered with the Office of Dam Safety.

(2) A classification of the status of all hazardous dams that pose a threat to public health, safety, welfare, and property or the environment, and when or whether they have been repaired or are in the process of being removed.

(3) A comprehensive list of dams that no longer serve their original purpose or any useful purpose and may be removed.

(4) A comprehensive list of dams that are abandoned as defined in section 44 of chapter 253 of

94 the General Laws.

95 (5) A comprehensive list of all dams whose existence, condition or operation pose a threat to

96 freshwater animal and plant and resident or migratory fish species habitat or movement.

97 SECTION 6. Nothing in this chapter shall be interpreted in any way to alter or amend any

98 permitting requirements, reporting requirements, allocation procedures, or other requirements set

99 forth in any other provision of the General Laws.